

1 Thomas H. Bienert, Jr (Cal. Bar No. 135311, *admitted pro hac vice*)
2 Whitney Z. Bernstein (Cal. Bar No. 304917, *admitted pro hac vice*)
3 BIENERT, MILLER & KATZMAN, PLC
4 903 Calle Amanecer, Suite 350
5 San Clemente, California 92673
6 Telephone: (949) 369-3700
7 Facsimile: (949) 369-3701
8 Email: tbienert@bmkattorneys.com
9 wbernstein@bmkattorneys.com

10 Attorneys for James Larkin

11 UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

13 United States of America,
14 Plaintiff,
15 v.
16 Michael Lacey, *et al.*,
17 Defendants.

Case No. CR-18-00422-PHX-SPL-02

Hon. Steven P. Logan

**DEFENDANT LARKIN'S JOINDER
IN DEFENDANT BRUNST'S
OPPOSITION TO GOVERNMENT'S
MOTION TO DEFER DISCLOSURE
OF CARL FERRER'S JENCKS ACT
STATEMENTS AND OBJECTIONS
TO IN CAMERA FILING OF THE
SAME, AND REQUEST FOR
DISCLOSURE OF THE SAME (DOC.
477)**

18 It is expected that excludable delay under 18 U.S.C. § 3161(h)(1) will occur as a result
19 of this motion or an order based thereon, as explained more fully below.

20 Defendant James Larkin hereby joins in Defendant John Brunst's Opposition to
21 Government's Motion to Defer Disclosure of Car Ferrer's Jencks Act Statements and
22 Objections to In Camera Filing of the Same, and Request for Disclosure of the Same (Doc.
23 477) ("Opposition to In Camera Motion re Carl Ferrer's Jencks Act Statements"). Mr. Larkin
24 adopts the positions set forth in said Opposition to In Camera Motion re Carl Ferrer's Jencks
25 Act Statements as if fully set forth herein.

26 Pursuant to the Scheduling Order in this case entered on May 2, 2018, the

1 government's deadline for "[p]roduction of Jencks materials and witness impeachment
2 material, if not produced sooner," was February 25, 2019. *See* Doc. 131 at 2. Defendants
3 filed a Joint Status Report on January 18, 2019 (Doc. 443), which the Court treated as a
4 motion/request to modify the Scheduling Order (*see* Doc. 448). The government objected
5 to Defendants' request to continue Defendants' upcoming deadline for four months (*see, e.g.,*
6 Doc. 446). At the January 25, 2019 status conference, the government continued to oppose
7 Defendants' requested continuance of the Scheduling Order, emphasizing the government's
8 intended compliance with the Scheduling Order:

9 As the scheduling order sets out, the government's agreed to
10 provide the defendants with Jencks material approximately 11
11 months before trial. As Your Honor is aware, in most federal
12 cases defendants aren't given Jencks materials until after a witness
13 has testified. We are giving it to them 11 months before trial.

14 January 25, 2019 Hearing Transcript at 12:22-13:3. The Court denied Defendants' request
15 for a continuance. *See id.* at 67:3-67:7 ("After carefully considering all of the issues, the
16 motion, which is Document Number 443, will be denied. The current deadlines in the
17 scheduling order that are spelled out in Document Number 131, the government and defense,
18 I am ordering you both to continue to meet those deadlines.").

19 Then, just a few weeks later, the government filed a secret, *in camera* motion to modify,
20 providing no explanation and plainly impacting Defendants' ability to meet their obligations
21 under the Scheduling Order. In effect, the government's secret, *in camera* motion is a motion
22 to modify the Scheduling Order. Further, at the January 25, 2019 status conference related
23 to the Scheduling Order, not only did the government not disclose its need to modify the
24 Scheduling Order, it also trumpeted its compliance with the Scheduling Order as a reason to
25 deny Defendants' requested continuance.

26 For all the foregoing reasons, as well as those laid out in Doc. 477, Mr. Larkin requests
27 that the Motion to Defer Disclosure (believe to be Doc. 461) be disclosed to the defense so
28 that Defendants may lodge further objections and briefing with the Court. In the interim,
Mr. Larkin objects to the *in camera* filing of the Motion and opposes the Motion itself. He

1 further requests that Ferrer's statements be immediately disclosed to the defense consistent
2 with the Court's Scheduling Order.

3
4 Respectfully submitted,

5 Dated: March 1, 2019

6 /s/ Whitney Z. Bernstein

7 Whitney Z. Bernstein
8 Thomas H. Bienert, Jr.
9 Bienert, Miller & Katzman, PLC
10 Attorneys for James Larkin
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CERTIFICATE OF SERVICE

I certify that on this 1st day of March 2019, I electronically transmitted a PDF version of this document to the Clerk of the Court, using the CM/ECF System, for filing and for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants listed below.

/s/ Toni Thomas

Toni Thomas

Anne Michelle Chapman, anne@mscclaw.com

Erin E. McCampbell emccampbell@lglaw.com

Anthony R. Bisconti, tbisconti@bmkattorneys.com

Ariel A. Neuman, aan@birdmarella.com

Bruce S. Feder, bf@federlawpa.com

James C. Grant, jimgrant@dwt.com

Lee David Stein, lee@mscclaw.com

Paul J. Cambria, pcambria@lglaw.com

Robert Corn-Revere bobcornever@dwt.com

Ronald Gary London, ronnielondon@dwt.com

Janey Henze Cook, janey@henzecoockmurphy.com

John Lewis Littrell jlittrell@bmkattorneys.com

Seetha Ramachandran, Seetha.Ramachandran@srz.com

Thomas H. Bienert, Jr. tbienert@bmkattorneys.com

Whitney Z. Bernstein wbernstein@bmkattorneys.com

Gary S. Lincenberg, glincenberg@birdmarella.com

Gopi K. Panchapakesan, gpanchapakesan@birdmarella.com

Michael D. Kimerer, MDK@kimerer.com

Rhonda Elaine Neff, rneff@kimerer.com

Michael L. Piccarreta, mlp@pd-law.com

Stephen M. Weiss, sweiss@karpweiss.com

John Jacob Kucera, john.kucera@usdoj.gov

Kevin M. Rapp Kevin.Rapp@usdoj.com

Margaret Wu Perlmeter Margaret.perlmeter@usdoj.gov

Reginald E. Jones reginald.jones4@usdoj.gov

Peter Shawn Kozinets Peter.Kozinets@usdoj.gov

Andrew C. Stone, andrew.stone@usdoj.gov